

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 22-CR-151

TOU L. XIONG,

Defendant.

ORDER GRANTING MOTION FOR JAIL CREDIT

On February 1, 2023, Defendant Tou L. Xiong pleaded guilty to one count of Aiding and Abetting the Possession with Intent to Distribute Methamphetamine pursuant to a Rule 11(c)(1)(C) provision in his plea agreement. Under the terms of the parties' Plea Agreement, the court was required to impose a sentence of 150 months imprisonment, to be served concurrently with any state court sentence he was currently serving. The court imposed the mandated sentence on May 1, 2023. At that time, the defendant requested a 333-day sentence credit to reflect the time he had already served in state prison after having his extended supervision on a previous state conviction revoked for essentially the same conduct. The Assistant United States Attorney (AUSA) who appeared on the case opposed the request since the Rule 11(c)(1)(C) plea agreement called for a sentence of 150 months and was silent on whether the prescribed sentence would be reduced by time spent in state custody prior to imposition of the federal sentence. Based on the Government's interpretation of the Agreement, the court denied the request. Xiong has now filed a letter renewing his request for credit. In response, the AUSA who negotiated the Plea Agreement with Xiong has indicated that the government does not object to his request for 333 days of sentence credit.

Under Rule 35(a) of the Federal Rules of Criminal Procedure, a district court can only correct a sentence for arithmetical, technical, or other clear error within 14 days after sentencing. Since more than 14 days have passed since Xiong's sentencing, that Rule would not apply. Construing Xiong's letter as a motion under 28 U.S.C. § 2255, however, it would appear that the court would have authority to grant Xiong's request. Based on the government's response, it appears Xiong was entitled credit under his agreement with the government. The court therefore grants Xiong's request and orders entry of an amended judgment reducing the 150-month sentence to 139 months, which sentence shall run concurrent with the sentences in Brown County Case Nos. 15CF77 and 20CF1329. All other provisions of the judgment shall remain unchanged.

SO ORDERED at Green Bay, Wisconsin this 18th day of August, 2023.

s/ William C. Griesbach
William C. Griesbach
United States District Judge